

**Commonwealth of Massachusetts**

**County of Middlesex**

**The Superior Court**

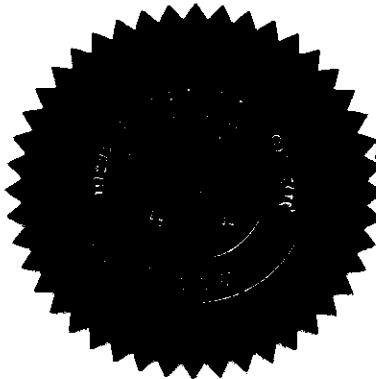
FILED  
IN CLERK'S OFFICE

2004 OCT 27 AM 11:57

U.S. DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

I, **Michael Brennan**, Assistant Clerk of the Superior Court of the Commonwealth of Massachusetts within and for said County of Middlesex, do certify that the papers hereto annexed are true pleadings in case No. **MICV2004-03672** entered in the Superior Court on **09/21/2004**.

IN TESTIMONY WHEREOF, I hereunto set my hand and  
affix the seal of said Superior Court,  
at said Lowell  
this 21st day of October, in the year of our  
Lord 2004



*Michael M Brennan*  
Assistant Clerk of the Courts

3

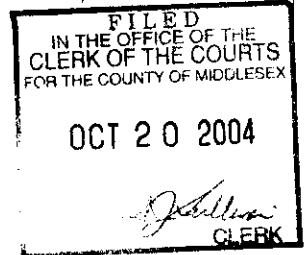
**COPY**

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

FILED  
CLERK OF THE COURT

OCT 18 A 9:46

J.S. DISTRICT COURT  
DISTRICT OF MASS.



3  
CONTINENTAL WOODCRAFT, INC.,

*Plaintiff,*

v.

SILVA'S EXPRESS, INC.,

*Defendant.*

CIVIL ACTION  
NO.

**04-40209 - FDS**

**NOTICE OF REMOVAL**

**TO:** The Honorable Judges of the United States District Court for the District of Massachusetts:

1. The Petitioner, Silva's Express, Inc. ("Silva's"), respectfully shows, upon information and belief, that it is the named defendant in the above-entitled civil action brought by the plaintiff, Continental Woodcraft, Inc. ("Continental"), which is now pending in the Middlesex Superior Court Department, Middlesex County Massachusetts, Civil Action No. 2004-03672-L (the "Civil Action").

2. On or about September 20, 2004, the Civil Action was commenced in the aforesaid Middlesex Superior Court Department, and Petitioner was served with the Summons, Complaint, Jury Demand, Cover Sheet and Tracking Order, **Exhibit A** hereto, in the Civil Action on September 27, 2004, as shown on the Summons.

3. Upon information and belief, no further proceedings have been had in the Civil Action, and the time of Petitioner within which to file a notice of removal has not expired.

4. **Jurisdiction.** Based on the allegations contained in the Complaint, this is a civil suit which may be removed to this Court pursuant to 28 U.S.C. §§ 1331, 1337(a) and 1441 in that Plaintiff, Continental, alleges a claim involving an Act of Congress regulating commerce, to wit: a claim in excess of \$10,000, exclusive of costs, for loss or damage to a shipment of property allegedly transported by Petitioner in interstate commerce from Worcester, Massachusetts to Charlotte, North Carolina on or about February 2004. Complaint, ¶¶ 4-5. Therefore, the Carmack Amendment to the ICC Termination Act of 1995 ("ICCTA"), 49 U.S.C. § 14706, governs Plaintiff's claims for loss or damage to the subject shipment. The amount of damages claimed by Plaintiff is \$47,972.00. *See Complaint* ¶ 6. The action is therefore removable pursuant to 28 U.S.C. §§ 1331, 1337(a) and 1441.

Pursuant to 28 U.S.C. § 1441(a), this action is one that may be removed by petitioner to this Court.

5. **Venue.** Petitioner desires to remove this action to the district court of the United States for the district in which it is now pending, to wit, the District of Massachusetts. 28 U.S.C. § 1446(a).

6. After the filing of this Notice of Removal with the United States District Court for the District of Massachusetts, (a) written notice of the filing of this Notice of Removal will be given by the attorney for Petitioner to Plaintiff as provided by law, (b) a certified copy of this notice will be filed with the Clerk of the Middlesex Superior Court Department, Lowell, Massachusetts, and (c) certified copies of all pleadings on file in said Middlesex Superior Court Department will be filed with this Court.

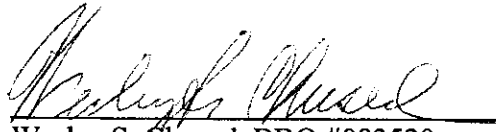
7. Petitioner has a good and sufficient defense to Plaintiff's claims in this action.

8. No previous application for the relief sought herein has been made to this or any other court.

**WHEREFORE**, Petitioner Silva's Express, Inc. prays that this action be removed from the Middlesex Superior Court Department, Lowell, Massachusetts, to the United States District Court for the District of Massachusetts.

SILVA'S EXPRESS, INC.  
By its attorney,

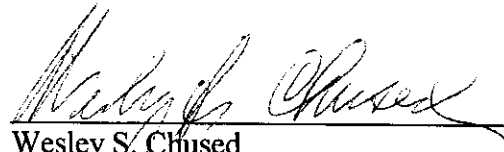
October 15, 2004

  
Wesley S. Chused, BBO #083520  
LOONEY & GROSSMAN LLP  
101 Arch Street  
Boston, MA 02110  
(617) 951-2800

**CERTIFICATE OF SERVICE**

I hereby certify that on October 15, 2004, I served a copy of the foregoing **NOTICE OF REMOVAL** upon all parties hereto electronically or via facsimile or by mailing copies thereof, via first-class mail, postage prepaid, properly addressed to:

Thomas C. O'Keefe III, Esq.  
180 West Central Street  
Natick, MA 01760

  
Wesley S. Chused

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

TRIAL COURT DEPARTMENT  
SUPERIOR COURT DEPT

\_\_\_\_\_  
CONTINENTAL WOODCRAFT, INC. )

*Plaintiff,* )

v. )

SILVA'S EXPRESS, INC. )

*Defendants.* )  
\_\_\_\_\_

CIVIL ACTION  
NO. 2004-03672-L

**NOTICE OF FILING NOTICE OF REMOVAL  
PURSUANT TO 28 U.S.C. §1446(d)**

- TO:** (1) Civil Clerk, Middlesex Superior Court Department, 360 Gorham Street, Lowell, MA 01852; and
- (2) Thomas C. O'Keefe, Esq., 180 West Central Street, Natick, MA 01760.
- 

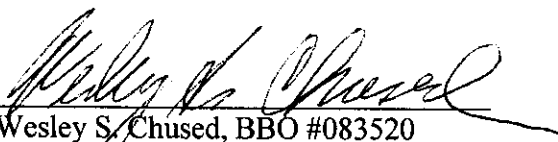
**Please take notice** that a Notice of Removal removing the within action, Civil Action No. 2004-03672-L, from the Middlesex Superior Court Department, Middlesex County, Lowell, Massachusetts, to the United States District Court for the District of Massachusetts, a certified copy of which is attached hereto, was duly filed in the office of the Clerk of the United States District

Court for the District of Massachusetts, Worcester, Massachusetts, on October 18, 2004 and assigned Civil Action No. 04-40209-FDS.

SILVA'S EXPRESS, INC.

By its attorney,

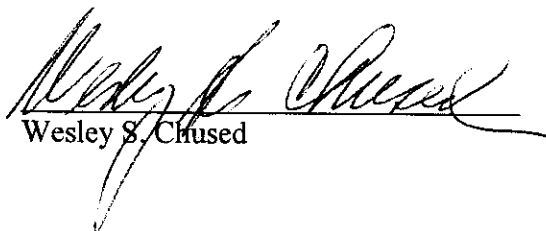
October 19, 2004

  
Wesley S. Chused, BBO #083520  
LOONEY & GROSSMAN LLP  
101 Arch Street  
Boston, MA 02110  
(617) 951-2800

**CERTIFICATE OF SERVICE**

I hereby certify that on October 19, 2004, I served a copy of the foregoing **NOTICE OF FILING NOTICE OF REMOVAL** upon all parties hereto electronically or via facsimile or by mailing copies thereof, via first-class mail, postage prepaid, properly addressed to:

Thomas C. O'Keefe, III, Esq.  
180 West Central Street  
Natick, MA 01760

  
Wesley S. Chused

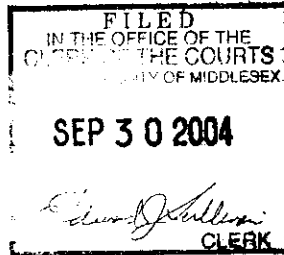
TO PLAINTIFF'S ATTORNEY: PLEASE CIRCLE TYPE OF ACTION INVOLVED: —  
TORT — MOTOR VEHICLE TORT — CONTRACT —  
EQUITABLE RELIEF — OTHER

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT  
DEPARTMENT  
OF THE  
TRIAL COURT  
CIVIL ACTION

No. 04-3672

MIDDLESEX, ss  
[seal]



Continental Woodcraft, Plaintiff(s)  
Inc.

v.

Silva's Express, Inc., Defendant(s)

SUMMONS

To the above-named Defendant:

You are hereby summoned and required to serve upon O'Keefe & Gale, plaintiff's attorney, whose address is 180 W. Central St., Natick, MA 01760, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, Robert A. Mulligan, Esquire, at the 20th day of September, in the year of our Lord Two Thousand Four.

Edward J. Sullivan  
Clerk

NOTES.

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all such defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

NOTICE TO DEFENDANT — You need not appear personally in court to answer the complaint, but if you claim to have a defense, either you or your attorney must serve a copy of your written answer within 20 days as specified herein and also file the original in the Clerk's Office.

PROOF OF SERVICE OF PROCESS

I hereby certify and return that on .....



Middlesex Sheriff's Office • Civil Process Division, P.O. Box 410180, Cambridge, MA 02141-1819 • (617) 547-1171

Middlesex, ss.

September 28, 2004

I hereby certify and return that on 9/27/2004 at 12:36PM I served a true and attested copy of the SUMMONS, COMPLAINT, CIVIL ACTION COVER SHEET & JURY DEMAND in this action in the following manner: To wit, by delivering in hand to FERNANDO BETTENCOURT, agent, person in charge at the time of service for SILVA'S EXPRESS, INC., at , 75 PHOENIX Avenue, Lowell, MA. Attest (\$5.00), Basic Service Fee (\$30.00), Conveyance (\$0.90), Postage and Handling (\$1.00), Travel (\$14.72) Total Charges \$51.62

*Arthur Santos*

Deputy Sheriff

( ..... )

( ..... )

( ..... )

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT  
DEPARTMENT  
OF THE  
TRIAL COURT  
CIVIL ACTION  
No.

MIDDLESEX, ss.

....., Plff.

v.

....., Deflt.

SUMMONS  
(Mass. R. Civ. P. 4)

625 CE 070

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, SS.**

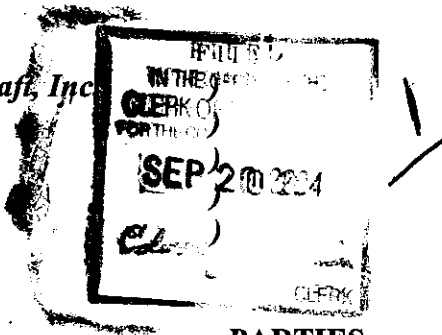
**Superior Court @ Lowell  
CIVIL ACTION NO.**

**04-3672**

**Continental Woodcraft, Inc.**

**vs.**

**Silva's Express, Inc.**



**COMPLAINT**

**PARTIES**

1. The Plaintiff is Continental Woodcraft, Inc., a Massachusetts corporation with a usual place of business at 181 Greenwood Street, Worcester, MA, 01007 and the Defendant is Silva's Express, Inc., a Massachusetts business corporation with a usual place of business at 75 Phoenix Avenue, Lowell, MA, 01852.

0363000009/20/04 CIVIL 240.00  
0363000009/20/04 SUR CHARGE 15.00  
0363000009/20/04 SEC 20.00  
0363000009/20/04 SUMMONS 5.00

**COUNT ONE**

2. The Plaintiff says that at all times relevant it was in the business of manufacturing wood and/or metal retail store fixtures.
3. That at all times relevant the Defendant was in the business of transporting goods as a common carrier.
4. That on or about February, 2004, the Defendant undertook to transport a certain load of wood and metal fixtures from the Plaintiff's place of business in Worcester to Hecht's Department Store in Charlotte, North Carolina.
5. That the Plaintiff says that on or before February 16, 2004 its agents, servants and/or employees so negligently transported and/or controlled said load and/or so carelessly and negligently operated its motor vehicle so as to cause the said load to be damaged.
6. That as a result thereof the goods in said load were broken and damaged to the amount of \$47,972.00.

**WHEREFORE, THE PLAINTIFF RESPECTFULLY DEMANDS JUDGMENT UNDER  
COUNT ONE TOGETHER WITH INTEREST AND COSTS THEREON.**


**COUNT TWO**

7. The Plaintiff repeats and incorporates herein all the allegations contained in paragraphs (1)-(4) above.
8. The Plaintiff says that the Defendant warranted that it would perform its work in a good and workmanlike manner.
9. That the Defendant did not perform its work in a good and workmanlike manner and breached its warranty.
10. That as a result thereof the goods in said load were broken and damaged to the amount of \$47,972.00.

WHEREFORE, THE PLAINTIFF RESPECTFULLY DEMANDS JUDGMENT UNDER COUNT TWO TOGETHER WITH INTEREST AND COSTS THEREON.

Dated this 16 day of September, 2004.

By Plaintiff's Attorneys,


  
\_\_\_\_\_  
O'Keefe & Gale  
180 West Central Street  
Natick, MA 01760  
(508)655-0000  
(BBO#378185-TCOK)  
(OF# MT-04-2)  
(YF# 99654-V4)

**JURY DEMAND**

Plaintiff hereby respectfully demands a trial by jury.

Dated this 16 day of September, 2004.

By the Plaintiff's Attorneys:

  
\_\_\_\_\_  
O'Keefe & Gale  
180 West Central Street  
Natick, MA 01760  
(508)655-0000

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, SS.**

**Superior Court @ Lowell  
CIVIL ACTION NO.**

**Continental Woodcraft, Inc.**

**vs.**

**Silva's Express, Inc.**

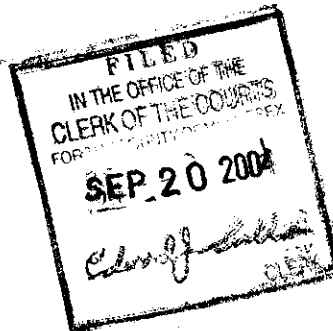
**04-3672**

**JURY DEMAND**

The Plaintiff hereby respectfully demands a trial by jury in either or both Superior Court or District Court.

Dated this 16 day of September, 2004.

By the Plaintiff's Attorneys:



  
O'Keefe & Gale  
180 West Central Street  
Natick, MA 01760  
(508)655-0000

FROM : JUDI

FAX NO. : 7818210931

dt. 08 2004 02:17PM P3

09/26/2007 19:24 FAX

**Commonwealth of Massachusetts  
County of Middlesex  
The Superior Court**

**CIVIL DOCKET # MICV2004-03672-L**

**RE: Continental Woodcraft, Inc. v Silva's Express, Inc.**

**TO: Thomas C O'Keefe III, Esquire  
O'Keefe & Gale  
180 West Central Street  
Natick, MA 01760**

**TRACKING ORDER - F TRACK**

You are hereby notified that this case is on the track referenced above as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

**STAGES OF LITIGATION**

**DEADLINE**

Service of process made and return filed with the Court	12/19/2004
Response to the complaint filed (also see MRCP 12)	02/17/2005
All motions under MRCP 12, 19, and 20 filed	02/17/2005
All motions under MRCP 15 filed	02/17/2005
All discovery requests and depositions completed	07/17/2005
All motions under MRCP 56 served and heard	08/16/2005
Final pre-trial conference held and/or firm trial date set	08/15/2005
Case disposed	11/14/2005

The final pre-trial deadline is not the scheduled date of the conference. You will be notified of that date at a later time.

Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.

This case is assigned to session "L" sitting in Cv CrtRm (Lowell) Middlesex Superior Court.

Dated: 09/21/2004

Edward J. Sullivan  
Clerk of the Court

Location: Cv CrtRm (Lowell)  
Telephone: 878-453-0201

BY: Michael Brennan  
Assistant Clerk

Disabled individuals who need handicap accommodations should contact the Administrative Office of the Superior Court at (617) 725-8130

I HEREBY ATTEST AND CERTIFY ON 10-16-04  
THAT THE FOREGOING DOCUMENT IS A FULL, TRUE  
AND CORRECT COPY OF THE ORIGINAL ON FILE  
IN MY OFFICE AND IN MY LEGAL CUSTODY.

**TONY ANASTAS  
CLERK, U.S. DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

Check website as to status of case: <http://ma-trialcourts.org/tclc>  
BY: Kelly H. [Signature]

**FAXED**

FROM : JUDI  
09/20/2027 23:01 FAX

FAX NO. : 7818210931

28 2004 02:37 PM PG

## CIVIL ACTION COVER SHEET

Trial Court of Massachusetts  
SUPERIOR COURT DEPARTMENT  
County: Middlesex

Docket Number

04-3672

PLAINTIFF(S) Continental Woodcraft, Inc.

DEFENDANT(S) Silva's Express, Inc.

ATTORNEY FIRM NAME ADDRESS AND TELEPHONE  
O'Keefe & Gale, 180 West Central Street, Hattick  
MA, 01760 (508)-655-0000 (OFFICE-04-2)  
Board of Bar Overseers Number: 378185

ATTORNEY (if known)

Place an x in one box only:

Origin code and track designation

1. F01 Original Complaint ☒ 4. F04 District Court Appeal c.231, s. 97 & 104 (After trial) ☒  
 2. F02 Removal to Sup.Ct. c. 231, s. 104 (Before trial) ☐ 5. F05 Reactivated after rescript/relief from judgment Order (Mass.R.Civ.P. 80) ☒  
 3. F03 Re-transfer to Sup.Ct. C.231, s. 102C ☒ 6. E10 Summary Process Appeal ☒

CODE NO.

TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)  
Personal Injury/property damage TRACK IS THIS A JURY CASE?  
B04 other negligence ☒ (X) Yes ( ) No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

## TORT CLAIMS

(Attach additional sheets as necessary)

- A. Documented medical expenses to date:  
 1. Total hospital expenses \$  
 2. Total Doctor expenses \$  
 3. Total chiropractic expenses \$  
 4. Total physical therapy expenses \$  
 5. Total other expenses (describe) \$  
 Subtotal \$  
 B. Documented lost wages and compensation to date \$  
 C. Documented property damages to date \$  
 D. Reasonably anticipated future medical and hospital expenses \$7,972.00  
 E. Reasonably anticipated lost wages \$  
 F. Other documented items of damages (describe) \$  
 G. Brief description of plaintiff's injury, including nature and extent of injury (describe) \$

TOTAL \$7,972.00

## CONTRACT CLAIMS


(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

TOTAL \$

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record  DATE 9/16/04

Commonwealth of Massachusetts  
MIDDLESEX SUPERIOR COURT  
Case Summary  
Civil Docket

**MICV2004-03672**  
**Continental Woodcraft, Inc. v Silva's Express, Inc.**

<b>File Date</b>	09/20/2004	<b>Status</b>	Disposed: transfered to other court (dtrans)
<b>Status Date</b>	10/21/2004	<b>Session</b>	L - Cv time-stan 1 (Lowell)
<b>Origin</b>	1	<b>Case Type</b>	B04 - Other negligence/pers injury/pro
<b>Lead Case</b>		<b>Track</b>	F

<b>Service</b>	12/19/2004	<b>Answer</b>	02/17/2005	<b>Rule12/19/20</b>	02/17/2005
<b>Rule 15</b>	02/17/2005	<b>Discovery</b>	07/17/2005	<b>Rule 56</b>	08/16/2005
<b>Final PTC</b>	09/15/2005	<b>Disposition</b>	11/14/2005	<b>Jury Trial</b>	Yes

**PARTIES**

<b>Plaintiff</b> Continental Woodcraft, Inc. 181 Greenwood Street Active 09/20/2004	<b>Private Counsel 378185</b> Thomas C O'Keefe III O'Keefe & Gale 180 West Central Street Natick, MA 01760 Phone: 508-655-0000 Fax: 508-655-2181 Active 09/20/2004 Notify
<b>Defendant</b> Silva's Express, Inc. 75 Phoenix Avenue Lowell, MA 01852 Served: 09/30/2004 Served (answr pending) 09/30/2004	<b>Private Counsel 083520</b> Wesley S Chused Looney & Grossman 101 Arch Street Boston, MA 02110 Phone: 617-951-2800 Fax: 617-951-2819 Active 10/20/2004 Notify

**ENTRIES**

Date	Paper	Text
09/20/2004	1.0	Complaint & civil action cover sheet filed
09/20/2004		Origin 1, Type B04, Track F.
09/30/2004	2.0	SERVICE RETURNED: Silva's Express, Inc.(Defendant) In hand 9/28/04
10/21/2004	3.0	Case REMOVED this date to US District Court of Massachusetts

**EVENTS**

MIDDLESEX, ss.

Commonwealth of Massachusetts

SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT

I, Clerk of said Court, do hereby certify that this is a true and correct copy of the original as the same appears in the files of said Court, and of record made by photographic process. I have signed this my hand and affixed the seal of said Superior Court.

*Charles M. Gervasio*  
Deputy Assistant Clerk

**Looney & Grossman LLP**  
Attorneys at Law

Wesley S. Chused  
Voicemail: Ext. 551  
Email: [wchused@lgllp.com](mailto:wchused@lgllp.com)

FILED  
CLERK OF COURT  
10/27/04 11:57  
101 Arch Street  
Boston, Massachusetts 02110-1112  
Telephone (617) 951-2800  
Telecopier (617) 951-2819  
[www.lgllp.com](http://www.lgllp.com)

October 26, 2004

Kathleen Hassett, Deputy, Clerk  
Harold D. Donohue Federal Bldg. and Courthouse  
Suite 502  
595 Main Street  
Worcester, MA 01608

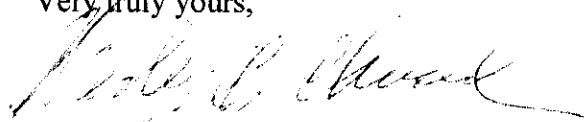
Re: Continental Woodcraft, Inc. v.  
Silva's Express, Inc.  
Civil Action No. 04-03672

Dear Ms. Hassett:

Pursuant to Local Rule 81.1(a), enclosed for filing are certified copies of the state court docket sheet and pleadings in the above civil action.

Kindly file these in your usual manner. Thank you.

Very truly yours,



Wesley S. Chused

WSC/dml  
Enclosures  
cc: Thomas C. O'Keefe, III, Esq.